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8 Attorneys for
9 Drita Pasha Kessler
10 Debtor and Debtor in Possession

11 UNITED STATES BANKRUPTCY COURT
12
13 CENTRAL DISTRICT OF CALIFORNIA
14
15 SAN FERNANDO VALLEY DIVISION

16 In re:

17 DRITA PASHA KESSLER,

18 Debtor and Debtor
19 in Possession.

Case No. 1:22-bk-11504 VK

Chapter 11

DECLARATIONS OF LEONARD PEÑA AND
DAVID MORALES RE: GENERAL CASE
STATUS

DATE: October 19, 2023

TIME: 2:00 p.m.

20 **DECLARATION OF LEONARD PEÑA**

21 I, Leonard Peña , declare as follows:

22 1. I am the attorney for Debtor in the above referenced
23 case. The facts set forth herein are within my personal knowledge
24 or I have gained knowledge of them from the regular business
25 records that I maintain. If called upon to do so, I could and
26 would testify competently thereto.

27 **2. Bankruptcy Adversaries**

28 a. *Kessler v. Travelers Property Casualty Company of*
America ("Preference Action") Adv. No. 1:23-ap-01044
VK

1 i. Parties are conducting discovery.

2 b. *Kessler v. Wizman* ("Turnover Action") Adv. No. 1:23-
3 ap-01015-VK

4 i. Plaintiff Debtor Drita Kessler has filed a motion
5 to disqualify Defendant's attorney scheduled for
6 November 1, 2023, at 2:00PM

7 c. *Travelers Property Casualty Company of America v.*
8 *Kessler* ("523 Action") Adv. 23-ap-01009 VK

9 i. Parties are conducting discovery and also have
10 requested that the matter be referred to
11 voluntary mediation.

12 **3. Other Contested Matters:**

13 The Debtor filed a notice of appeal of this Court's order
14 regarding her homestead. The appeal was recently transferred to
15 the District Court and is pending as case number 2:23-cv-08310-
16 ODW. The Debtor is seeking to retain appellate counsel.

17 **Other:**

18 4. On October 4, 2023, the Debtor filed an *Application to*
19 *Employ Michael Jay Berger as General Bankruptcy Counsel* [Doc. 154]
20 to be heard on November 4, 2023 at 2:00PM.

21 5. On October 10, 2023, Leonard Peña filed his *Motion to*
22 *Withdraw as Attorney* [Doc. 160] as the Debtor's attorney in this
23 case scheduled to be heard on November 4, 2023, at 2:00PM.

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1 6. Attached hereto is the Declaration of David Morales the
2 Debtor's special litigation counsel explaining the status of the
3 District Court litigation between Travelers and the Debtor.

4 a. The hearing on the Debtor's motion to vacate is
5 scheduled to heard on October 20, 2023 at 10:00 a.m.
6 in the District Court.

7
8 I declare of penalty of perjury, under the laws of the
9 United States of America, that the foregoing is true and correct,
10 and that this Declaration was executed on October 12, 2023, at
11 Pasadena, California

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14 _____
15 LEONARD PEÑA
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6 DAVID MORALES, ESQ. (SBN 191229)
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7 THE MORALES LAW FIRM
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8 San Jose, California 95113
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10 Attorneys for Debtor and
Debtor-in-Possession Drita Kessler
11

12 **UNITED STATES BANKRUPTCY COURT**
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14
15 *In re:*

16 DRITA PASHA KESSLER,
17 Debtor and Debtor-in-Possession.
18
19

Case No. 1:22-BK-11504 VK

**THIRD DECLARATION OF
DAVID MORALES, ESQ., RE:
STATUS OF MOTION FOR
SANCTIONS AND MOTION TO
VACATE DEFAULT
JUDGMENT AND TO DISMISS**

20 **DECLARATION**

21 I, David Morales, declare as follows:

- 22 1. I am an attorney duly-licensed to practice law in the State of California, and
23 duly admitted to practice before the Courts of California including those of
24 the Central District of California. I am litigation counsel for debtor and
25 debtor-in-possession DRITA PASHA KESSLER ("Kessler" or "Debtor").
26 Each of the facts contained in this declaration is based upon my personal
27 knowledge, except where stated on information and belief or otherwise
28

1 qualified, and, if called as a witness to do so, I could competently testify
2 thereto.

3 ***Lengthy Motions Required Revision To Comply With Court's Page Limitations***

- 4 2. The underlying dispute in this matter involves at least four (4) prior
5 litigations and one (1) appeal over the course of approximately sixteen (16)
6 years, as well as relevant portions of these voluminous litigation records
7 involving hundreds of documents.
- 8 3. On July 28, 2023, I finally completed my work, and was prepared to file my
9 Motion to Set Aside Defaults, To Vacate Default Judgments, and To
10 Dismiss ("Motion to Vacate"), my Motion for Sanctions ("Sanctions
11 Motion"), together with a Request for Judicial Notice, supporting
12 Declarations by Ms. Drita Kessler, and myself, and [Proposed] Orders, with
13 an August 25, 2023 hearing date. However, the pleadings exceeded the
14 Court's page limitations.
- 15 4. On August 1, 2023, I filed an *Ex Parte* Application for Leave to File a Brief
16 Exceeding the Court's Page Limit ("*Ex Parte* Application"), together with
17 my supporting declaration with the proposed motions attached as exhibits.
18 On August 9, 2023, the District Court issued its Order Granting In Part and
19 Denying In Part my *Ex Parte* Application. In short, the Court's decision
20 required me to substantially revise my pleadings in order to comply with the
21 Court's page limitations.

22 ***Revised Motions And Supporting Papers Filed With October 20, 2023 Hearing***

- 23 5. Due to my other litigation obligations, including a number of out-of-town
24 hearings and unexpected *ex parte* hearings, I was unable to complete my
25 revised pleadings until approximately September 15, 2023, with an expected
26 hearing date of October 13, 2023. On September 14, 2023, I realized that
27

1 the District Court was not setting any hearings for October 13, 2023, so I
2 had to calendar the hearings for October 20, 2023 instead.

3 6. Therefore, on September 22, 2023, I filed and served my revised Motion to
4 Vacate, Motion for Sanctions, and related documents, for hearing on
5 October 20, 2023. Attached hereto are true and correct copies of the Motion
6 to Vacate (**Exhibit A**), Appendix 1: Summary of Facts and Prior Record
7 (**Exhibit B**), Declaration of Drita Kessler (**Exhibit C**), Declaration of David
8 Morales, Esq. (**Exhibit D**), Request for Judicial Notice (**Exhibit E**), and
9 Motion for Sanctions (**Exhibit F**).

10 7. Although my Motion to Vacate included a Table of Contents and Table of
11 Authorities (“TOC/TOA”), on September 23, 2023, I noticed that I had
12 inadvertently filed the final version without the TOC/TOA. On September
13 23, 2023, I filed and served the TOC/TOA as a supplement to the Motion to
14 Vacate. Attached hereto as **Exhibit G**, is a true and correct copy of the
15 TOC/TOA I filed for the Motion to Vacate.

16 8. On September 29, 2023, Travelers filed its Oppositions to the Motion to
17 Vacate and the Motion for Sanctions (collectively, “Oppositions”).
18 Attached hereto are true and correct copies of the Travelers’ Oppositions to
19 Kessler’s Motion to Vacate and Motion for Sanctions, as **Exhibit H** and
20 **Exhibit I**, respectively.

21 9. I omitted from this Declaration approximately 1,350 pages of declarations
22 Travelers filed in support of its Oppositions. Those declarations focus
23 primarily on disparaging Kessler – based, in part, on this Court’s homestead
24 ruling, as well as on other disparaging allegations by Mr. Park. Mr. Park’s
25 disparaging allegations appear improper and completely irrelevant to the
26 issues before the District Court on Kessler’s Motion to Vacate and Motion

1 for Sanctions based on the fraud committed upon the Court by Travelers'
2 Attorneys.

3 10. On October 6, 2023, I filed and served Reply Briefs in Support of Kessler's
4 Motion to Vacate and Motion for Sanctions. Attached hereto are true and
5 correct copies of these Reply Briefs, as **Exhibit J** and **Exhibit K**,
6 respectively. I also filed Supplemental Declarations by Ms. Kessler and
7 myself in order to address misleading statements and factual
8 mischaracterizations contained in Travelers' filings. Attached hereto are
9 true and correct copies of these Declarations, as **Exhibit L** and **Exhibit M**,
10 respectively.

11 11. Finally, on October 6, 2023, I filed and served my Evidentiary Objections
12 and Motion to Strike improper portions of Travelers' filings. (Attached
13 hereto as **Exhibit N** is a true and correct copy.) In short, Travelers made
14 numerous false and misleading assertions without citing any supporting
15 evidence in the record. Additionally, the probative value of those, and other,
16 allegations in Travelers' Oppositions is far outweighed by their intended
17 prejudicial effect. It appears Travelers made every effort to draw the District
18 Court's attention away from the facts and law relevant to the issues actually
19 before the District Court, including, without limitation:

- 20 a. The undisputed fact that, on June 14, 2018, Travelers falsely represented
21 to the District Court that it had notified Kessler and DK Art of Fraley's
22 tort claims against Travelers, that it had requested indemnity, and that
23 Movants refused that request, when none of these representations were
24 true, and Movants *had no actual knowledge* of Fraley's tort claims
25 against Travelers;
26 b. Whether Travelers failed to properly served Kessler and DK Art, and
27 whether the Default Judgments are, therefore, void as a matter of law;

- 1 c. Whether the subject indemnity provision required Kessler and DK Art
2 to indemnify Travelers for its own active negligence and intentional-tort
3 liability in mishandling Fraley's Attorney Lien;
4 d. Whether Travelers failed to comply with its obligations under indemnity
5 law and under the Travelers Bad-Faith Settlement (the "Agreement") by
6 failing to give reasonable notice to Movants of Fraley's tort claims
7 against Travelers and requesting indemnity, thereby preventing Movants
8 from exercising their rights under the Agreement; and
9 e. Whether Travelers' Attorneys committed fraud on the Court by falsely
10 representing that it had notified Movants of Fraley's claims, falsely
11 representing that it had properly served Movants, and by withholding
12 from the Court the body of law indicating that an indemnity provision
13 must explicitly state that it covers the indemnitee's own negligence in
14 order for it to do so, and whether Travelers intentionally committed these
15 acts in bad faith in order to improperly maximize the Default Judgments
16 against Kessler and DK Art.

17 I declare under penalty of perjury that the foregoing is true and correct. Executed
18 this 11th day of October 2023 at Watsonville, California.

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20 David Morales

In re: In re Drita Kessler Debtor(s).	CHAPTER: 11 CASE NUMBER: 1:22-bk-11504 VK
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PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
402 S. Marengo Avenue Suite B Pasadena, CA 91101

A true and correct copy of the foregoing document entitled (*specify*) Declarations of Leonard Pena and David Morales re: General Case Status stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 10/12/2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Michael Jay Berger on behalf of Debtor Drita Pasha Kessler

michael.berger@bankruptcypower.com, yathida.nipha@bankruptcypower.com;michael.berger@ecf.inforuptcy.com

Shraddha Bharatia on behalf of Interested Party Courtesy NEF
notices@becket-lee.com

Andre Boniadi on behalf of Defendant Jacob Wizman
aboniadi@bzlegal.com

Katherine Bunker on behalf of U.S. Trustee United States Trustee (SV)
kate.bunker@usdoj.gov

Robert Paul Goe (TR)
bktrustee@goeforlaw.com,
kwareh@goeforlaw.com;bkadmin@goeforlaw.com;C187@ecfcbis.com;kmurphy@goeforlaw.com;rgoe@goeforlaw.com

David C Nealy on behalf of Creditor Travelers Property Casualty Company of America
david.nealy@limnexus.com, clement.leung@limnexus.com,mimi.cho@limnexus.com,candice.raub@limnexus.com

David C Nealy on behalf of Plaintiff Travelers Property Casualty Company of America
david.nealy@limnexus.com, clement.leung@limnexus.com,mimi.cho@limnexus.com,candice.raub@limnexus.com

Leonard Pena on behalf of Attorney Pena & Soma, APC
lpena@penalaw.com, penasomaecf@gmail.com;penalr72746@notify.bestcase.com

Leonard Pena on behalf of Debtor Drita Pasha Kessler
lpena@penalaw.com, penasomaecf@gmail.com;penalr72746@notify.bestcase.com

Leonard Pena on behalf of Defendant Drita Pasha Kessler
lpena@penalaw.com, penasomaecf@gmail.com;penalr72746@notify.bestcase.com

Leonard Pena on behalf of Plaintiff Drita Pasha Kessler
lpena@penalaw.com, penasomaecf@gmail.com;penalr72746@notify.bestcase.com

Brett Ramsaur on behalf of Creditor Travelers Property Casualty Company of America
brett@ramsaurlaw.com, alecia@ramsaurlaw.com;paralegal@ramsaurlaw.com

In re: Drita Pasha Kessler	Debtor(s).	CHAPTER 11 CASE NUMBER 1:22-bk-11504-VK
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Brett Ramsaur on behalf of Interested Party LIMNEXUS LLP
brett@ramsaurlaw.com, alecia@ramsaurlaw.com; paralegal@ramsaurlaw.com

James E Till on behalf of Creditor Travelers Property Casualty Company of America
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martha.araki@till-lawgroup.com; myrtle.john@till-lawgroup.com; sachie.fritz@till-lawgroup.com

James E Till on behalf of Defendant Travelers Property Casualty Company of America
james.till@till-lawgroup.com,
martha.araki@till-lawgroup.com; myrtle.john@till-lawgroup.com; sachie.fritz@till-lawgroup.com

James E Till on behalf of Interested Party Courtesy NEF
james.till@till-lawgroup.com,
martha.araki@till-lawgroup.com; myrtle.john@till-lawgroup.com; sachie.fritz@till-lawgroup.com

James E Till on behalf of Plaintiff Travelers Property Casualty Company of America
james.till@till-lawgroup.com,
martha.araki@till-lawgroup.com; myrtle.john@till-lawgroup.com; sachie.fritz@till-lawgroup.com

United States Trustee (SV)
ustpregion16.wh.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On 10/12/2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Hon. Victoria S. Kaufman
United States Bankruptcy Court
21041 Burbank Boulevard, Suite 354 / Courtroom 301 Woodland Hills, CA 91367

Service information on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

10/12/2023
Date

NOEMI SANDOVAL
Printed Name

/S/ NOEMI SANDOVAL
Signature